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SUPREME COURT U. S.

No. 4 ORIGINAL.

In the Supreme Court of the United States

THE UNITED STATES OF AMERICA, COMPLAINANT,

vs.

JOSEPH F. SHIPP, ET AL.

MOTION OF DEFENDANTS, JOSEPH F. SHIPP AND JERIMIAH GIBSON, FOR A RE-HEARING.

MOSES H. CLIFT,
JAMES J. LYNCH,
Attorneys for Defendants Shipp and Gibson.

MACGOWAN-COOKE PRINTING CO., CHATTANOOGA.

In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
JOSEPH F. SHIPP, ET AL.

No. 5, Original.

MOTION OF DEFENDANTS, JOSEPH F. SHIPP AND JERIMIAH GIBSON, FOR A RE-HEARING.

Defendants, Joseph F. Shipp and Jerimiah Gibson, by leave of the Court first obtained to do so, and with all due and proper respect for the finding of the Honorable Court, move the Court for a re-hearing of this cause and show the following reasons why a new trial should be granted them:

I.

Because, as we respectfully insist, the Honorable Court erred in its holding on the preliminary matters in this cause, and again, in the final finding of the Court that the defendants had not purged themselves of the contempt alleged to have been committed by them, as set out in their answer, denying intention to commit contempt of court and in sub-

jecting them to liability or punishment for the alleged criminal contempt, thereby depriving them of their liberty and right of trial by jury, as provided in criminal offenses, contrary to the law of the land and the rights guaranteed to American citizens.

II.

Because, as we respectfully insist, this Honorable Court erred, in the opinion of the majority of the Court, in treating the case as a civil instead of a criminal contempt, whereas it should have held, if a contempt had been committed by them, that it was a criminal contempt and not civil, and under this record it should have held that there was no contempt committed by these defendants:

First: Because the weight and preponderance of the evidence does not sustain or justify the conclusion or establish the guilt of defendants.

Second: Because there is no material or competent, or at least sufficient, evidence of the character required in criminal cases to sustain the findings or conclusions of the majority of the Court.

Third: Because the opinion of the majority of the Court, while holding defendants guilty of a criminal contempt and subject to punishment therefor, failed to give them the benefit of the presumption of innocence to which they are entitled

under our laws when applied to criminal offenses; it failed to give them the benefit of a reasonable doubt which applies in this country to all trials of a criminal nature. The Court in effect adopted the rule which requires defendants to establish their innocence contrary to the laws and rules heretofore adhered to in this country.

III.

Because the Court, or majority of the court, erred in holding defendants guilty of contempt along lines and on matters not set out in the information which constituted the charges against defendants and that they were required to meet or defend against. In this, the information alleges a conspiracy between defendants and other persons to lynch and murder one Ed Johnson, with the intent to show their contempt and disregard for this Honorable Court, etc., whereas there is no evidence, or at least there is no competent or sufficient evidence of a competent nature, to sustain this charge. The substantive, and in fact the only specific charge or statement of fact or facts set forth in the information, on which the charge of conspiracy was founded and on which the charge of contempt was based, was that the defendants, or defendant Shipp, had removed the guards from the jail in order to facilitate or make more easy the work of said mob. These facts are denied by defendants and the evidence wholly fails to sustain these, or any of the

charges, as against these defendants. Especially is this true when the rule of evidence in criminal cases is applied to the proof offered in this case, as should be done, as it would exclude from the consideration of the Court all newspaper articles, publications, etc., and all hearsay testimony offered in the cause, as incompetent and irrelevant, and the same having been objected to at the time offered, said objections should have been sustained by the Court and said articles and other incompetent evidence excluded from the consideration of the court, as we respectfully insist.

IV.

Because the Court erred in not taking into consideration the disavowal of any intention on the part of defendants to commit a contempt of this Honorable Court and their denial that they intentionally committed any contempt of the Honorable Court, as without this intent so entering into their acts it should not be said that there was an offense.

V.

Because the Court erred in holding these defendants guilty of contempt of the Honorable Court:

First: Because the information upon which the charge is based shows that the defendant Shipp was at the time of the alleged contempt the Sheriff of Hamilton County, in

the State of Tennessee, and an executive officer of the State of Tennessee for said County, and that as such Sheriff was the legal custodian, under the Laws of Tennessee, of all persons duly committed in said County under the Law of said State, to confinement and imprisonment within said jail; "that the said *Ed Johnson was then and there a prisoner confined and restrained of his liberty in the said county jail and in the lawful custody and control of said sheriff and said deputy sheriffs under commitment duly issued out of the criminal court of said Hamilton County.*"

Second: That it was under this commitment from the Hamilton County criminal court of the State of Tennessee that said Ed Johnson was held at the time he was lynched; that while the said Johnson had not been transferred as a prisoner of the United States yet as this record shows and as we respectfully insist the defendants Shipp and Gibson, did all in their power to protect said Ed Johnson from the mob or mob violence; that they exercised their best judgment from the facts known or communicated to them for the protection of prisoners in said county jail.

Third: That having exercised their best judgment and there being no evidence of any threatened or expected mob violence on that night or at the time it occurred, as is shown by the record in this cause, and they having denied any intention to commit a contempt of the order of this Honorable Court and having exercised as executive officers of the

State of Tennessee their best judgment in the premises they should not be held guilty of contempt of the orders of this Honorable Court. Especially is this true under the proof in this record, as it shows that defendants, and especially the defendant Shipp, used extraordinary care and made extraordinary effort to protect the prisoner against violence or danger.

VI.

Therefore, we respectfully but most earnestly insist that for the reasons hereinbefore set forth these defendants should have a re-hearing or that a re-hearing should be granted them by the Honorable Court.

VII.

Defendants will on or before the meeting of the Honorable Court at its next October term present a petition asking said re-hearing in support of this motion, together with a brief of facts and of law sustaining their views as set forth in this motion and reasons why the Court should grant them a re-hearing.

All of which is respectfully submitted.

MOSES H. CLIFT,
JAMES J. LYNCH,
Attorneys for Defendants Shipp and Gibson.